

ESTTA Tracking number: **ESTTA202981**

Filing date: **04/05/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91183065
Party	Defendant Daniel, Sayo Isaac
Correspondence Address	SANFORD J. ASMAN LAW OFFICE OF SANFORD J. ASMAN 570 VININGTON CT ATLANTA, GA 30350-5710 sandy@asman.com
Submission	Answer
Filer's Name	Sanford J. Asman
Filer's e-mail	sandy@asman.com
Signature	/sanford j. asman/
Date	04/05/2008
Attachments	080405 Answer to Opposition.pdf (4 pages)(20175 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SMS CLOTHING,

Plaintiff-Opposer

v.

SAYO ISAAC DANIEL

Defendant-Applicant.

Opposition No. 91183065

ANSWER

COMES NOW, Sayo Isaac Daniel, Defendant-Applicant (“Applicant”), and by way of answer to the Notice of Opposition of Plaintiff-Opposer SMS Clothing (“Opposer”) responds as follows:

First Affirmative Defense

The Notice of Opposition fails to state a claim upon which relief can be granted.

Second Affirmative Defense

The Notice of Opposition was not timely filed as it states that Opposer is a “sole proprietorship”, yet it fails to disclose the name of the sole proprietor, wherefore the real party in interest is distinct from the pseudonym “SMS CLOTHING” of the purported entity to whom extensions of time to permit opposition were granted.

Third Affirmative Defense

The failure of Opposer to identify the real party in interest constitutes “unclean hands”, wherefore Opposer is not entitled to any relief from this honorable TTAB.

Responses to Allegations in Enumerated Paragraphs

1. Applicant is without sufficient information to form a belief as to the allegations of Paragraph 1, whereby the allegations of Paragraph 1 are denied.

2. The allegations of Paragraph 2 are admitted.

3. Applicant is without sufficient information to form a belief as to the allegations of Paragraph 3, whereby the allegations of Paragraph 3 are denied.

4. The allegations of Paragraph 4 are denied.

5. Paragraph 5 contains multiple allegations. To the extent that Paragraph 5 asserts that "SMS" is a mark owned by Opposer, the allegations of Paragraph 5 are denied. To the extent that the allegations of Paragraph 5 assert that Opposer is entitled to arbitrarily parse Applicant's mark, the allegations are without basis, and they are denied.

6. The allegations of Paragraph 6 are denied.

7. The allegations of Paragraph 7 are entirely speculative, whereby the allegations of Paragraph 7 are denied.

8. The allegations of Paragraph 8 are speculative, and, to the extent that they purport to a particular "class of consumers" they are without cognizable meaning or interpretation, whereby the allegations of Paragraph 8 are denied.

9. The allegations of paragraph 9 are denied.

CONCLUSION

WHEREFORE, Applicant prays that this honorable TTAB will now dismiss the present Opposition.

Respectfully submitted,

Dated: April 5, 2008

By s/ Sanford J. Asman
Sanford J. Asman

Georgia Bar No. 026118
Attorney for Defendant-Applicant
Sayo Isaac Daniel

Law Office of Sanford J. Asman
570 Vinington Court
Atlanta, Georgia 30350

Phone : (770) 391-0215
Fax : (770) 668-9144
E-mail : sandy@asman.com

CERTIFICATE OF SERVICE

I certify that on the date set forth below, I electronically filed Defendant-Applicant's:

ANSWER

using the ESTTA system, and that I also mailed a copy, by First Class Mail, with adequate postage affixed, to:

Glenn A Gundersen, Esq.
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808

Respectfully submitted,

Dated: April 5, 2008

By s/ Sanford J. Asman
Sanford J. Asman
Georgia Bar No. 026118
Attorney for Defendant-Applicant
Sayo Isaac Daniel

Law Office of Sanford J. Asman
570 Vinington Court
Atlanta, Georgia 30350

Phone : (770) 391-0215
Fax : (770) 668-9144
E-mail : sandy@asman.com